INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	4
Specification of error to be urged	6
Summary of argument	6
Argument:	
Under Section 3466, Revised Statutes, the United States is entitled to priority in payment of interest on the taxes due it from the date of assignment until the taxes are paid	10
1. The running of interest was not terminated by the assignment	11
2. The interest accruing after the assignment is a priority debt due to the United States	18
3. The bankruptcy rules governing allowance of interest do not apply	24
4. The general rules governing allowance of post-assignment interest to other creditors do not apply	30
Conclusion	33

CITATIONS

Cases:	
Am. Iron Co. v. *Seaboard Air Line*, 233 U. S. 261	26
American Surety Co. v. *Carbon Timber Co.*, 263 Fed. 295	20
Big Diamond Mills Co. v. *United States*, 51 F. 2d 721	18
Billings v. *United States*, 232 U. S. 261	19
Board of Comm'rs v. *United States*, 308 U. S. 343	32
Bousfield & Poole Manufacturing Co., In re, 3 Fed. Cas. No. 1704	27
Bramwell v. *U. S. Fidelity Co.*, 269 U. S. 483	19, 24, 25, 28, 30
Burnet v. *Harmel*, 287 U. S. 103	33
Byuss Mfg. Co., In re, 64 N. Y. S. 2d 601	33
Capital Building & Loan Assn. v. *Commissioner*, 23 B. T. A. 848	18
Colorado Milling & Elevator Co. v. *Howbert*, 57 F. 2d 769	18
Guarantee Co. v. *Title Guaranty Co.*, 224 U. S. 152	27
Halsted, Matter of, 42 App. Div. 101	33
Illinois v. *Campbell*, 329 U. S. 362	25, 32
Illinois v. *United States*, 328 U. S. 8	10, 18, 20, 22, 23, 29
Kallak, In re, 147 Fed. 276	26-27, 28

981155—51——1

Cases—Continued

	Page
Lewis, Trustee, v. *United States*, 92 U. S. 618	27
Manning v. *Seeley Tube & Box Co.*, 338 U. S. 561	12, 18, 30
Massachusetts v. *United States*, 333 U. S. 611	21, 22, 28
Mothersead v. *United States Fidelity & Guaranty Co.*, 22 F. 2d 644, certiorari denied, 276 U. S. 637	20
New Jersey v. *Anderson*, 203 U. S. 483	32
New York v. *Maclay*, 288 U. S. 290	31
New York v. *Saper*, 336 U. S. 328	8, 12, 17, 23, 25, 26–27, 28, 29
Pearsall v. *Central Oil & Gas Co.*, 23 F. 2d 716	20
Penrose v. *United States*, 18 F. Supp. 413	18
Phelps v. *United States*, 105 F. 2d 904	18
Phillips, Matter of, 196 App. Div. 175, affirmed 232 N. Y. 559	22
Price v. *United States*, 269 U. S. 492	19, 29
Rodgers v. *United States*, 332 U. S. 371	30, 31, 32
Royal Indemnity Co. v. *United States*, 313 U. S. 289	32
Sawyer Tanning Co. v. *C. J. O'Keefe Shoe Co.*, 23 F. 2d 717	13, 20
Simpson, Inc., Matter of v. *United States*, 258 App. Div. 148	20
Spokane County v. *United States*, 279 U. S. 80	19, 23, 30, 31
United States v. *Emory*, 314 U. S. 423	23, 24, 25, 27, 29, 30, 32
United States v. *Fisher*, 2 Cranch 358	31
United States v. *Kaplan*, 74 F. 2d 664	28
United States v. *Oklahoma*, 261 U. S. 253	23, 24, 28, 31
United States v. *Pelzer*, 312 U. S. 399	33
United States v. *Remund*, 330 U. S. 539	20, 23, 29
United States v. *State Bank of North Carolina*, 6 Pet. 29	22, 30, 33
United States v. *Summerlin*, 310 U. S. 414	28
United States v. *Waddill Co.*, 323 U. S. 353	18
Vanston Committee v. *Green*, 329 U. S. 156	32

Statutes:

Act of March 2, 1867, c. 176, 14 Stat. 517	27
Internal Revenue Code:	
Sec. 1400 (26 U. S. C. 1400)	11
Sec. 1401 (26 U. S. C. 1401)	11
Sec. 1410 (26 U. S. C. 1410)	11
Sec. 1420 (26 U. S. C. 1420)	2, 6, 7, 9, 11, 12, 18, 19, 21, 29, 31
Sec. 1622 (26 U. S. C. 1622)	11
Sec. 1623 (26 U. S. C. 1623)	11
Sec. 1627 (26 U. S. C. 1627)	2, 6, 7, 9, 11
Revenue Act of 1918, c. 18, 40 Stat. 1057, Sec. 250	13
Revenue Act of 1921, c. 136, 42 Stat. 227, Sec. 250	13
Revenue Act of 1924, c. 234, 43 Stat. 253, Sec. 276	13–14, 17
Revenue Act of 1926, c. 27, 44 Stat. 9, Sec. 276	14
Revenue Act of 1928, c. 852, 45 Stat. 791, Sec. 294	14
Revenue Act of 1932, c. 209, 47 Stat. 169, Sec. 294	14

Statutes—Continued

	Page
Revenue Act of 1934, c. 277, 48 Stat. 680, Sec. 294	14
Revenue Act of 1935, c. 829, 49 Stat. 1014, Sec. 404	16
Revenue Act of 1936, c. 690, 49 Stat. 1648, Sec. 294	14
Revenue Act of 1938, c. 289, 52 Stat. 447, Sec. 294	16
Revised Statutes:	
Sec. 3466 (31 U. S. C. 191)	3, 7, 8, 9, 10, 19, 22, 24, 26, 28, 29, 31
Sec. 3467 (31 U. S. C. 192)	3, 28
Debtor and Creditor Law (12 McKinney's Consolidated Laws of New York)	23, 32
Miscellaneous:	
H. Conference Rep. No. 356, 69th Cong., 1st Sess., p. 41 (1939–1 Cum. Bull. (Part 2) 361, 369)	15
H. Rep. No. 179, 68th Cong., 1st Sess., p. 26 (1939–1 Cum. Bull. (Part 2) 241, 259)	14
H. Rep. No. 1860, 75th Cong., 3d Sess., p. 49 (1939–1 Cum. Bull. (Part 2) 728, 763)	16
Mim. 4496, XV–2 Cum. Bull. 530, 531 (1936)	16
S. Rep. No. 398, 68th Cong., 1st Sess., p. 32 (1939–1 Cum. Bull. (Part 2) 266, 288)	14

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 100

THE UNITED STATES OF AMERICA, PETITIONER

v.

HAROLD BLOOM, GENERAL ASSIGNEE FOR THE BENEFIT OF CREDITORS OF PAVONE TEXTILE CORP.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the New York Supreme Court, Special Term, New York County (R. 16–18), is reported at 195 Misc. 702. The opinion of the New York Supreme Court, Appellate Division, First Department (R. 22–24), is reported at 276 App. Div. 596. The opinion of the Court of Appeals of New York (R. 25–27) is reported at 302 N. Y. 206.

JURISDICTION

The judgment of the Court of Appeals was entered on March 9, 1951. (R. 27–28.) The petition for writ of certiorari was filed on June 6, 1951, and was granted on November 5, 1951. (R. 31.) Jurisdiction is conferred on this Court by 28 U. S. C. 1257 (3).

QUESTION PRESENTED

Whether, in general assignment proceedings for the benefit of creditors, Section 3466 of the Revised Statutes entitles the United States to priority in the payment of interest on its tax claims for the period from the date of the filing of the assignment until the taxes are paid.

STATUTES INVOLVED

Internal Revenue Code:

> SEC. 1420. COLLECTION AND PAYMENT OF TAXES.
>
> * * * * *
>
> (b) *Addition to Tax in Case of Delinquency.*—If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 1401 (c) and 1411) at the rate of 6 per centum per annum from the date the tax became due until paid.
>
> * * * * *
>
> (26 U. S. C. 1420.)
>
> SEC. 1627 [Added by Sec. 2 (a), Current Tax Payment Act of 1943, c. 120, 57 Stat. 126]. OTHER LAWS APPLICABLE.

All provisions of law, including penalties, applicable with respect to the tax imposed by section 1400 shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the tax under this subchapter.
(26 U. S. C. 1627.)

Revised Statutes:

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.
(31 U. S. C. 191.)

SEC. 3467 [As amended by Sec. 518 (a) of the Revenue Act of 1934, c. 277, 48 Stat. 680]. Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United

States, or for so much thereof as may remain due and unpaid.
(31 U. S. C. 192.)

STATEMENT

The facts, as set out in the statement under New York Rule 234 (R. 1–3) and as agreed upon (R. 3, 4–8), are as follows:

On April 26, 1948, Pavone Textile Corporation executed an assignment to Harold Bloom for the benefit of creditors, which was filed in the office of the clerk of the County of New York on May 17, 1948. (R. 2, 4.) On October 8, 1948, the United States filed a claim with the assignee for social security and withholding taxes in the amount of $2,345.34, including penalties and interest to September 30, 1948. (R. 2, 4.) The proof of claim contained a demand for payment of interest to the date of payment. (R. 2.)

The assignee filed his final account on February 8, 1949, and a supplemental account on April 1, 1949. (R. 2, 5.) On April 1, 1949, the New York Supreme Court at Special Term made an order appointing a referee to take and state the final and supplemental accounts of the assignee, hear objections thereto, and take proof of all services rendered. (R. 2, 5.) On June 23, 1949, the referee filed his final report, in which he denied to the United States post-assignment interest on its tax claims. (R. 2, 5–7.) Thereafter the assignee moved to confirm the referee's report, and

to direct the distribution of assets. (R. 7.) On July 8, 1949, the return date of this motion, the United States filed objections to that part of the referee's report which denied post-assignment interest on its tax claims. (R. 2, 7.) In an opinion rendered July 19, 1949, the New York Supreme Court at Special Term overruled these objections (R. 16–18) and on August 2, 1949, entered an order confirming the report in all respects (R. 2, 7, 12–15). Under this order, the assignee was directed to pay the claims of the United States, inclusive of penalties and interest up to the date of the filing of the assignment, in the total amount of $2,302.81 (R. 4, 13), and to retain as a reserve fund pending the prosecution of any appeal by the United States the amount of $413.34 as interest on the tax claims of the United States from May 17, 1948 (the filing date of the assignment), until June 30, 1951 (R. 14). Pursuant to this order, the amount of $2,302.81 has been paid to the United States. (R. 4.)

On appeal by the United States from so much of the order of Special Term as directed payment of interest on its tax claim only to the date of the filing of the deed of assignment (R. 7, 10), the Appellate Division of the State Supreme Court, First Department, reversed on April 25, 1950, holding that Section 3466 of the Revised Statutes compels allowance of post-assignment interest on the claims of the United States (R.

21–24). On appeal by the assignee (R. 19–20), the Court of Appeals of New York, on March 9, 1951, reversed the Appellate Division, holding that Section 3466 of the Revised Statutes does not entitle the United States to post-assignment interest (R. 25–27).[1]

SPECIFICATION OF ERROR TO BE URGED

The Court of Appeals of New York erred in holding that under Section 3466 of the Revised Statutes the United States was not entitled to the payment of interest on its tax claims from the date of the assignment until the date of payment as a priority debt.

SUMMARY OF ARGUMENT

1. Under Sections 1420 and 1627 of the Internal Revenue Code, the debtor in this case was unconditionally liable for the payment of interest on the social security and withholding taxes owed by it, as a part of the taxes, from their due date until paid. The interest accruing after the date of the assignment by the tax debtor for the benefit of creditors is plainly payable under these statutes which make no exception for the case where the tax debtor may have become insolvent

[1] The Appellate Division and the Court of Appeals also ruled on the claim of the State of New York under state statutes for post-assignment interest on the unemployment taxes due it (R. 23, 26–27). Those rulings are not before this Court on certiorari and are not here relevant since they involve only a construction of the state statutes.

and assigned his property. Nor does any other federal statute create an exception. Apart from the clear language of the interest sections, the history of the treatment of interest due from insolvent persons in previous Revenue Acts makes it abundantly clear that Congress intends interest on tax debts to be collected from the estate of an insolvent person down to the date of payment of the tax.

2. Since the post-assignment interest was required to be paid by virtue of Code Sections 1420 (b) and 1627, it was a debt due the United States. This being so, Section 3466 of the Revised Statutes in clear terms commands that it be paid first. The interest accruing after the assignment was fixed as to liability and rate on the date of the assignment. The fact that the precise amount of the interest was not computable until the time of payment of the tax claims had been determined, affected, at most, the date on which the priority attached, not the priority itself. Any other view would not comport with the liberal construction to which Section 3466 is entitled as a measure designed to secure adequate public revenues. Here the interest is a revenue expressly designated by Congress as one to be collected.

3. The lower court erroneously interpreted the language of Section 3466 as making applicable to assignment proceedings the rules applied in proceedings under the Bankruptcy Act. The deci-

sions of this Court are clear that the language relied on does not do this but merely defines the acts of insolvency which will bring Section 3466 into play, and that proceedings in insolvency and bankruptcy are separate and distinct.

Nor does *New York* v. *Saper,* 336 U. S. 328, require disallowance of post-assignment interest, as the Court of Appeals thought. It was concerned only with the proper interpretation of the Bankruptcy Act, as amended, which does not apply here. The decision that that Act requires disallowance of interest on tax claims, as in the case of other creditors, is not pertinent here, since the very terms of Section 3466 direct that the tax claims are not to be assimilated to the claims of other creditors but on the contrary have an absolute priority.

Decisions under the original provisions of the Bankruptcy Act, which allowed post-bankruptcy interest to be paid on tax claims, did so because the tax claims under the original Act had an absolute priority and were not subject to proof. The tax claims of the United States under Section 3466 have the same status and accordingly those decisions support allowance of the post-assignment interest here.

If it be argued that there should be consistency in the treatment of tax claims in bankruptcy proceedings and in state insolvency proceedings, the answer is that Section 3466 of the Revised Statutes continues to apply where it has not been

superseded. Since it accords a priority to tax claims not provided by the Bankruptcy Act, there is no warrant whatsoever for trying to force into a common mold proceedings to which Congress has given dissimilar treatment. Since the Bankruptcy Act concededly does not apply to the state proceedings, there is no reason that its limitations on interest should. Indeed an exemption of the interest from the priority given all debts under Section 3466, which has the function of assuring adequate public revenues and is construed liberally to achieve that purpose, can only be implied upon the clearest showing of Congressional intent, which is not present here.

4. The rules adopted by the courts to determine whether other creditors are entitled to be paid post-assignment interest do not apply to the priority claims of the United States for such interest. Section 3466 of the Revised Statutes and Code Sections 1420 (b) and 1627, which provide for the payment of the interest as a priority debt, are supreme and cannot be displaced except by Congress. Equitable rules of distribution applied by the New York courts cannot govern allowance of interest on priority tax claims arising under federal statutes. The matter is one which may not vary with the particular state courts distributing the insolvent estate but must be determined under a fixed rule of uniform application. If any inequities are thought to exist in the

application of the controlling statutes as they were written, the remedy lies with Congress, and not the courts.

ARGUMENT

Under Section 3466, Revised Statutes, the United States is Entitled to Priority in Payment of Interest on the Taxes Due It From the Date of Assignment Until the Taxes Are Paid

Section 3466 of the Revised Statutes, *supra*, p. 3, provides that "the debts due to the United States shall be first satisfied" whenever a person indebted to the United States is insolvent and makes a voluntary assignment of his property. In this case the debtor, a corporation, did not have sufficient property to pay all its debts and made a voluntary assignment thereof for the benefit of creditors. Thereupon the United States became entitled to be paid first with respect to the debts due it. *Illinois* v. *United States*, 328 U. S. 8, 9. This was recognized by the lower court, which stated that the federal priority statute "clearly has application here" (R. 25), and is conceded by the respondent assignee in his brief opposing the granting of certiorari (Br. 2).

There is no dispute that under Section 3466 the United States was properly accorded priority by Special Term (R. 12–15) for the payment of the taxes due it, including interest thereon up to the date the assignment was filed. The only ques-

tion is as to whether interest accruing on the taxes for the period after that date until the taxes were paid is required to be paid by the assignee under the priority provided by Section 3466. It is our position that interest on federal taxes continues to accrue after the date of the assignment and that it must be paid in advance of the claims of other creditors.

1. *The running of interest was not terminated by the assignment.*

The taxes due the United States were social security and withholding taxes.[2] With respect to the social security taxes, Section 1420 (b) of the Internal Revenue Code, *supra*, p. 2, provides that if the tax is not paid when due, there shall be added *as part of the tax* interest at the rate of 6 percent per annum *from the date the tax became due until paid.* And Section 1627 of the Code, *supra*, p. 2, makes the interest provision of Section 1420 (b) applicable to the withholding tax.

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[2] The social security taxes were the federal insurance contributions (or so-called "Title VIII") taxes imposed by Section 1400 of the Internal Revenue Code on employees and by Code Section 1410 on employers. The employees' tax was required by Section 1401 (a) to be collected by the employer by deducting the amount of the tax from the wages as and when paid.

The withholding taxes were the amounts required to be deducted and withheld as income taxes by the debtor corporation from the wages paid employees pursuant to Section 1622 of the Internal Revenue Code. Under Section 1623 the employer was liable to pay to the United States the income tax required to be deducted and withheld.

Thus, the amounts of both kinds of taxes in this case were increased under the specific terms of the statutes by interest at 6 per cent from the due dates of the taxes until they were paid.

There is no suggestion in the language of Section 1420 (b) that the running of the interest there prescribed is to stop if an assignment for the benefit of creditors is made, if a receiver is appointed, or indeed in any situation involving the estate of an insolvent tax debtor. And no other federal statute contains provisions which could be construed as evidencing a Congressional intent to stop interest on tax debts in the case of an assignment for the benefit of creditors. This is in contrast to the situation in which a petition in bankruptcy is filed, where, as this Court held in *New York* v. *Saper,* 336 U. S. 328, the Bankruptcy Act, as amended in 1926 and 1938, indicated that Congress intended interest on tax claims to stop at the date of bankruptcy and the inconsistent provisions of Section 1420 (b) and other similar statutes, providing for the addition of interest as part of the tax, could not negative the Bankruptcy Act's contrary requirement. Here, then, in the absence of a statutory provision to the contrary, it must be concluded that, as Section 1420 (b) states, Congress intended interest to run even after the tax debtor assigned his property. See *Manning* v. *Seeley Tube & Box Co.,* 338 U. S. 561, 566.

Apart from the clear language of Section 1420 (b), there is additional persuasive evidence that Congress intended all of the statutory interest prescribed by it, including the post-assignment interest, to run and be collected after an insolvent tax debtor had assigned or otherwise lost control over his property. Section 250 (e) of the Revenue Act of 1918, c. 18, 40 Stat. 1057, and of the Revenue Act of 1921, c. 136, 42 Stat. 227, provided that—

> If any tax remains unpaid after the date when it is due, and for ten days after notice and demand by the collector, then, *except in the case of estates of* insane, deceased, or *insolvent persons,* there shall be added as part of the tax the sum of 5 per centum on the amount due but unpaid, plus interest at the rate of 1 per centum per month upon such amount from the time it became due: * * * [Italics supplied].

This exemption from the addition of statutory interest [3] was withdrawn from the estates of insolvent persons in the Revenue Act of 1924, c. 234,

[3] It is noted that in *Sawyer Tanning Co.* v. *C. J. O'Keefe Shoe Co.*, 23 F. 2d 717, the District Court for the District of Massachusetts held that Section 250 (e) of the 1918 Act, quoted above, did not imply a waiver by Congress of ordinary interest under general law on tax claims against an insolvent person, and it allowed interest at 6 percent, rather than at the statutory rate of 12 percent, from the due date until the date the tax was paid as a priority debt under Section 3466.

43 Stat. 253, by which it was provided in Section 276 (c) that:

> (c) In the case of estates of incompetent, deceased, or insolvent persons, there shall be collected interest at the rate of 6 per centum per annum in lieu of the interest [1 percent per month] provided in subdivisions (a) and (b) of this section.

The purpose of this provision was explained by S. Rep. No. 398, 68th Cong., 1st sess., p. 32 (1939–1 Cum. Bull. (Part 2) 266, 288), as follows:

> Section 276 (c): Although estates of "insane, deceased, or insolvent persons" are excepted from the additions to the tax provided in section 250 (e) of the existing law, no interest upon the amounts due and unpaid by such estates is there provided. This subdivision provides for interest at the rate of 6 percent. * * *

H. Rep. No. 179, 68th Cong., 1st sess., p. 26 (1939–1 Cum. Bull. (Part 2) 241, 259), is substantially the same. It is of course obvious that the "estate" of an insolvent person is necessarily his property in the hands of a receiver, assignee, or other fiduciary.

The 6 percent interest rate, in lieu of the 1 percent per month rate, was continued in Section 276 (c) of the Revenue Act of 1926 and in Section 294 (c) of the Revenue Acts of 1928, 1932, 1934, and 1936, but the words "For any period an estate is held by a fiduciary appointed by order

of any court of competent jurisdiction or by will" were substituted for "In the case of estates of incompetent, deceased, or insolvent persons." This change was explained in the Conference Report on the 1926 Act (H. Conference Rep. No. 356, 69th Cong., 1st sess., p. 41 (1939–1 Cum. Bull. (Part 2) 361, 369)) as follows:

> Amendment No. 69: The House bill retained the existing law and provided that in the case of estates of incompetent, deceased, and insolvent persons there should be collected interest at the rate of 6 percent a year in lieu of interest at the rate of 1 percent a month for delinquencies in payment of taxes.
>
> Under the existing law there is considerable doubt whether the reduced rate of interest provided is applicable only to cases where the tax is imposed upon the estate, or also includes cases where an estate is called upon to pay interest for the period before the estate came under the control of the fiduciary, for example, if notice and demand is made upon the taxpayer, and he is delinquent in payment, and dies, can there be collected out of the estate interest at the rate of 1 percent a month down to the time of his death? Under the existing law there is also the difficulty of determining with accuracy the time when a person becomes incompetent or insolvent. The Senate amendment met the above difficulties by providing that the reduced interest rates

> should cover only the period when the property is under the control of a fiduciary appointed by order of any court of competent jurisdiction or by will. The House recedes.

Thus, the reduced rate of interest was applicable only after the tax debtor's property had come under the control of a court-appointed fiduciary, and the regular interest rate continued to apply before that time.[4]

When the interest rate in the case of any internal revenue tax or customs duty was reduced to 6 percent by Section 404 of the Revenue Act of 1935, c. 829, 49 Stat. 1014, the provision for a 6 percent interest rate during the period an estate is held by a court-appointed fiduciary became surplusage and it was omitted in Section 294 of the Revenue Act of 1938, c. 289, 52 Stat. 447. H. Rep. No. 1860, 75th Cong., 3d sess., p. 49 (1939–1 Cum. Bull. (Part 2) 728, 763), stated:

> Section 294 (c) of the Revenue Act of 1936 is not retained in this bill, since it is clearly surplusage. Prior to the enactment of section 404 of the Revenue Act of 1935, reducing the rates of interest on unpaid taxes from 1 percent per month to 6 percent

[4] Since an assignee for the benefit of creditors is not a fiduciary appointed by court order, the regular interest rate of 1 percent per month applied to the insolvent estate after a voluntary assignment for the benefit of creditors under the provisions as amended in 1926. The Commissioner of Internal Revenue so instructed collectors, revenue agents, and other employees of the Bureau of Internal Revenue in Mim. 4496, XV–2 Cum. Bull. 530, 531 (1936).

per annum, the matter eliminated provided a special rule in the case of estates held by fiduciaries appointed by courts of competent jurisdiction or by will. Now that all unpaid taxes bear interest at the rate of 6 percent per annum, there is no further need for continuing the matter eliminated, and the interest rate in such cases is governed by other provisions of section 294.

The withdrawal in 1924 of the complete exemption from statutory interest on income taxes previously enjoyed by estates of insolvent persons, accompanied by the express provision for collection of interest from such estates, albeit at a reduced rate, which has since been changed to the statutory rate applicable generally as set out above, certainly requires the conclusion that Congress now intends the estates of insolvent persons in the hands of assignees and other nonbankruptcy fiduciaries[5] to be liable for payment of the statutory interest. Although these statutory provisions refer specifically to income taxes, there is no reason to suppose that interest on claims for social security and withholding (employees' income taxes) taxes here involved were intended to be treated differently.

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[5] As already indicated, *New York* v. *Saper*, 336 U. S. 328, 340–341, fn. 18, holds that the Bankruptcy Act, as amended, has a special contrary requirement which governs in estates administered under that Act.

It is thus plain, we believe, that there is no basis for implying an exception of postassignment interest from the general provision of Section 1420 (b) that interest shall run on, and be added as part of, the taxes due the United States until they are paid.

2. *The interest accruing after the assignment is a priority debt due to the United States*

If, as the language of Section 1420 (b) seems plainly to say, the interest until date of payment of the taxes became part of the taxes[6] (cf. *Manning* v. *Seeley Tube & Box Co.*, 338 U. S. 561, 570), that interest, as taxes, was a debt due the United States under Section 3466 of the Revised Statutes. There can be no question now that social security and withholding taxes are debts due the United States under that section. *Illinois* v. *United States*, 328 U. S. 8; *United States* v.

[6] *Big Diamond Mills Co.* v. *United States*, 51 F. 2d 721, 725 (C. A. 8), held that under earlier revenue statutes making the interest a part of the tax, the liability for the tax and interest is a single liability. See also *Colorado Milling & Elevator Co.* v. *Howbert*, 57 F. 2d 769, 772 (C. A. 10); *Phelps* v. *United States*, 105 F. 2d 904, 905 (C. A. 2).

Penrose v. *United States*, 18 F. Supp. 413 (E. D. Pa.), held that interest on an estate tax collected under Section 308 (h) of the Revenue Act of 1926, c. 27, 44 Stat. 9, was not a tax, but that statute was not phrased exactly as is Section 1420 (b) here; it provided that interest should be assessed at the same time as the deficiency in tax and be collected as a part of the tax. Nor did the statute construed in *Capital Building & Loan Assn.* v. *Commissioner*, 23 B. T. A. 848, contain provisions comparable to Code Section 1420 (b), involved here.

Waddill Co., 323 U. S. 353; *Price* v. *United States,* 269 U. S. 492, 499. If, on the other hand, the interest prescribed by Section 1420 (b) is, despite the phrasing of that section, not deemed to be a part of the tax as such, it is plain, as shown above, that that section creates an unconditional liability to the United States for the interest which accrued after the assignment until the taxes were paid and that liability is a debt, as much as is any other liability imposed by an Act of Congress, as, for example, taxes. Cf. *Spokane County* v. *United States,* 279 U. S. 80, holding that both taxes and penalties assessed for understatement of income on tax returns were debts entitled to priority under R. S. Section 3466; *Billings* v. *United States,* 232 U. S. 261, 284–288.

Since, under any theory, the post-assignment interest fixed by statute is a debt owing to the United States, the terms of Section 3466 demand that it be given priority in payment. The interest accruing after the date on which the assignment was filed was as much a part of the statutory debt for interest as was the interest accruing before the filing of the assignment, and if Section 3466 accorded priority to one part, as is not here disputed, it must also to the other. The statutory language is all-inclusive, embracing all debts (*Bramwell* v. *U. S. Fidelity Co.,* 269 U. S. 483, 487–488), and it therefore negatives the view that post-assignment interest, or any other debt due

the United States, is to be excepted from its operation. And, indeed, it has been the rule to allow the entire interest on a tax claim of the United States down to the date of payment as a priority debt in assignment and receivership proceedings to which Section 3466 applied. See *Pearsall* v. *Central Oil & Gas Co.*, 23 F. 2d 716 (W. D. Pa.); *Sawyer Tanning Co.* v. *C. J. O'Keefe Shoe Co.*, 23 F. 2d 717 (D. Mass.); *Matter of Simpson, Inc.*, v. *United States*, 258 App. Div. 148; cf. *Illinois* v. *United States*, 328 U. S. 8, in which the federal tax claims, which were held to have priority, included interest at 6 percent until paid (see p. 2 of the record in that case, No. 749, October Term, 1945), although the fund available to pay all creditors was less than the total amount of the taxes alone and no separate issue as to the interest was presented. Also cf. *United States* v. *Remund*, 330 U. S. 539, which gave priority to a debt claimed by the United States for feed and crop loans which included interest to date of payment (R. 3, No. 417, October Term, 1946), although again no separate issue as to allowance of the interest was raised. Similarly, in the case of sureties who were subrogated to the priority of the United States under Section 3466, interest has been allowed until their claims were paid. *Mothershead* v. *United States Fidelity & Guaranty Co.*, 22 F. 2d 644, 654 (C. A. 8), certiorari denied, 276 U. S. 637; *American Surety Co.* v. *Carbon Timber Co.*, 263 Fed. 295, 302 (C. A. 8).

The priority of the United States attached from the time when the debtor assigned his property. *Massachusetts* v. *United States* 333 U. S. 611, 617, fn. 8. On that date, the taxes were owing and the liability to pay interest at the rate of 6 percent, as a part of the tax debt, until the taxes were paid existed by virtue of Section 1420 (b) of the Internal Revenue Code. Thus, the amount of the taxes, the liability, and the interest rate were all fixed and the amount of the interest had not been computed only because the date on which the taxes would be paid was not then known. In these circumstances, the post-assignment interest would seem clearly to be an obligation to the United States at the time of the assignment. But in any event, the amount of the preexisting liability for the post-assignment interest was computable finally on the date of the Special Term's order of distribution (R. 12–15), or the date of payment soon thereafter (R. 4), and the priority of the United States for its payment attached at the very latest at that time. The uncertainty, until payment was authorized, as to the precise amount of the interest for which liability existed on the date of assignment, whatever the amount finally was, affected at most the time at which the priority of the United States attached as to it, and not the priority itself. There is nothing to warrant the view that the federal priority fails as to an interest liability which is fixed as to

liability and rate by statute on the date of the assignment and the final amount of which will be affected only by the date of payment. In *United States* v. *Bank of North Carolina,* 6 Pet. 29, the statutory priority was held to extend to a debt whether then payable to the United States or payable only *in futuro.* Significantly, Mr. Justice Story there said (p. 38):

> In cases of general assignments by debtors, there would be a still stronger reason against making a distinction between bonds then payable and bonds payable *in futuro;* for the debtor might, at his option, give any preferences to other creditors, and postpone the debts of the United States, of the latter description, and even exclude them altogether.

In *Matter of Phillips,* 196 App. Div. 175, affirmed, 232 N. Y. 559, the New York courts held Section 3466 to afford priority in all cases of insolvency to any obligations due to the United States, even when claims had not matured. Cf. *Massachusetts* v. *United States,* 333 U. S. 611, 626–627, where Mr. Justice Rutledge posed a situation in which liability itself, as well as the date on which it matured, would have been wholly contingent on events after the assignment.

Section 3466 is one of the measures designed to aid in the collection of taxes (*Illinois* v. *United States,* 328 U. S. 8, 11), which as an integral part include interest to date of payment, and it is to be

construed liberally in order to achieve its purpose of securing adequate public revenues. *United States* v. *Emory*, 314 U. S. 423, 426, and see *infra*, pp. 29–30. To deny priority to the statutory post-assignment interest here would not comport with the rule calling for a liberal construction.

The lower court cited no other federal statute[7] as creating an exemption of post-assignment interest from the priority granted by Section 3466, either expressly or by implication. Cf. *Illinois* v. *United States*, 328 U. S. 8, *United States* v. *Remund*, 330 U. S. 539, 543–545, and *United States* v. *Emory*, 314 U. S. 423, 429–433, in which the contention was rejected that other federal statutes were so inconsistent that an intention to relinquish the federal priority as to a particular debt must be implied. However, it attempted to justify the denial of priority for the post-assignment interest on the grounds (1) that, as it interpreted the language of Section 3466, the interest rules applicable to tax claims in proceedings under the Bankruptcy Act were incorporated and that *New York* v. *Saper*, 336 U. S. 328, required

[7] It is of course clear that no provision of the New York Debtor and Creditor Law can impair the federal priority established by Section 3466, even though it may otherwise govern the insolvency proceeding. *United States* v. *Oklahoma*, 261 U. S. 253, 260; *Spokane County* v. *United States*, 279 U. S. 80. While the Court of Appeals apparently did not deem the state law to be controlling on the federal claim (R. 25–27), the Supreme Court at Special Term erroneously did support its ruling on that ground (R. 17–18).

disallowance of post-assignment interest (R. 25–26); and (2) that cases applying the general rule that creditors are not entitled to such interest where the proceeds are insufficient to pay all creditors in full supported its conclusion (R. 25). Neither of these purported reasons for its decision has any validity.

3. *The bankruptcy rules governing allowance of interest do not apply*

The language of Section 3466 of the Revised Statutes that "the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof * * * as to cases in which an act of bankruptcy is committed" does not, as the court below seemed to think (R. 25–26) confine the federal priority in assignment proceedings to the same priority status the United States has for its claims in proceedings under the Bankruptcy Act. On the contrary, the reference to an act of bankruptcy there "is general, and is for the purpose of defining one of the ways in which the debtor's insolvency may be manifested." *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483, 490. See also *United States* v. *Emory*, 314 U. S. 423, 426; *United States* v. *Oklahoma*, 261 U. S. 253, 260. Following an act of bankruptcy, an insolvent person's estate may be administered either in proceedings under the Bankruptcy Act or in non-bankruptcy insolvency

proceedings, and where the latter procedure is followed, the provisions of the Bankruptcy Act do not extend to, or modify, the priority conferred by Section 3466. *United States* v. *Emory,* 314 U. S. 423, 426–429; *Bramwell* v. *U. S. Fidelity Co.,* 269 U. S. 483, 490; cf. *Illinois* v. *Campbell,* 329 U. S. 362, 367–370. It follows that the court below erroneously concluded from the language of Section 3466 (R. 26) that inasmuch as the priority in bankruptcy does not include post-bankruptcy interest, so the priority in assignment proceedings does not include post-assignment interest.

New York v. *Saper,* 336 U. S. 328, does not warrant the lower court's conclusion that post-assignment interest is not entitled to be accorded priority under Section 3466. The *Saper* case was concerned only with priority under the Bankruptcy Act, which as shown above does not govern priority under Section 3466. As the Court stated (p. 341) the case presented only a question as to the proper interpretation of the current Bankruptcy Act. The disallowance of the post-bankruptcy interest in that case was based essentially on the ground that no provision of the Bankruptcy Act could be construed as allowing tax claims to be excepted from the general rule that stops interest at bankruptcy (pp. 330–332) and to the contrary that, in the amendments to the Bankruptcy Act, Congress had evidenced an intention to assimilate taxes to other debts for nearly all

purposes, including denial of post-bankruptcy interest (pp. 337–341).[8] Indeed, the opinion recognizes, we believe, that interest accruing after bankruptcy on tax claims is clearly a debt of the bankrupt but decides that a court of bankruptcy should not recognize it in distributing the estate. Cf. *Am. Iron Co.* v. *Seaboard Air Line*, 233 U. S. 261, 266.

Obviously the *Saper* opinion does not support the lower court's decision in this case but on the contrary leads to the opposite conclusion. Here, the terms of Section 3466 itself show that debts due the United States are not assimilated to the claims of other creditors, as are tax claims in bankruptcy, but instead are absolutely prior to other claims, and the post-assignment interest, as a debt, expressly comes within that priority. Also, the practice has been to allow post-assignment interest as a preferred debt (see above, p. 20), and the failure of Congress to amend Section 3466 to change this rule has some significance.

In another respect, moreover, the *Saper* case furnishes support for the Government's position here. The opinion pointed out that the *Kallak*

[8] The Court held further that even though interest had been allowed by the courts on tax claims after bankruptcy as a matter of practice prior to enactment of the Chandler Act, this did not amount to a settled judicial construction that such interest was properly allowable under Section 57 (j) of the original Bankruptcy Act, so that reenactment of Section 57 (j) in the Chandler Act did not constitute a Congressional approval of the policy of allowing post-bankruptcy interest (pp. 332–337).

(*In re Kallak*, 147 Fed. 276 (D. N. D.)) line of cases, which had allowed interest in bankruptcy proceedings on tax claims until payment, had done so because Section 64a of the Bankruptcy Act originally gave those claims an absolute priority and dispensed with proof of them as claims (pp. 333–335, 337).[9] The opinion emphasized that the amendments to the Bankruptcy Act had changed the status of tax claims in both respects (pp. 334–335). In contrast, in this case the tax claims due the United States have the status that tax claims originally had in bankruptcy and that status has not been changed by amendments—that is, the tax claims have an absolute priority under Section 3466. Also, while the tax claims, including interest, are generally filed in the insolvency proceedings, Section 3466 does not require this. Indeed, the person administering the insolvent

[9] The first three federal bankruptcy acts specifically preserved the priority of the United States over all other claimants even in bankruptcy proceedings, and it was only the express provision of Congress in the Bankruptcy Act of 1898 that disturbed this state of affairs. *Guarantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152; *United States* v. *Emory*, 314 U. S. 423, 428. The United States was not obliged to prove its debts and was in no wise bound by the 1867 Act. The provision therein granting priority to the United States merely reaffirmed the then existing priority now found in Section 3466, and was intended to exclude the possibility of a different conclusion. *Lewis, Trustee* v. *United States*, 92 U. S. 618, 620–622; Act of March 2, 1867, c. 176, 14 Stat. 517, Sec. 28. Interest was allowed to the United States in a claim under the 1867 Act until date of payment. *In re Bousfield & Poole Manufacturing Co.*, 3 Fed. Cas. No. 1704.

estate becomes a trustee for the United States (*Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483, 488; *United States* v. *Oklahoma*, 261 U. S. 253, 260) and would distribute the assets to others at his peril even if the United States did not file a claim. See *United States* v. *Kaplan*, 74 F. 2d 664 (C. A. 2). Section 3467 of the Revised Statutes, *supra*, p. 3, make him personally answerable in his own person and estate to the extent he pays other debts before he satisfies and pays the debts due the United States,[10] and in *United States* v. *Summerlin*, 310 U. S. 414, it was held that no state statute relating to the filing of claims can affect this liability. Thus, as in the case of tax claims in bankruptcy originally, there is no requirement that a claim of the United States under Section 3466 must be proved or even filed in the insolvency proceedings. Accordingly, the *Kallak* line of cases as discussed in the *Saper* opinion by analogy supports allowance of post-assignment interest here.

The interest on tax claims accruing after the assignment is not to be denied priority on the theory that Congress must intend the rule in state proceedings subject to Section 3466 to be the same as in bankruptcy proceedings. The absolute priority accorded tax claims by Section 3466 in in-

[10] In *Massachusetts* v. *United States*, 333 U. S. 611, the United States commenced suit to enforce a personal liability against the assignee under Section 3467 for paying a state claim before he paid debts due the United States.

solvency proceedings is quite different from the status of tax claims under the Bankruptcy Act (*New York* v. *Saper,* 336 U. S. 328, 332). The failure to alter the priority given by Section 3466 is, in itself, convincing evidence that Congress did not intend consistency in the treatment of tax claims under the two acts.

Moreover, a surrender of priority by Congress as to any debt is not to be implied except on the clearest showing. As this Court stated in *United States* v. *Emory,* 314 U. S. 423, 433, with respect to a claim that the provisions of another federal statute were inconsistent with the federal priority, "only the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of Section 3466." See also *Illinois* v. *United States,* 328 U. S. 8, 11–12; *United States* v. *Remund,* 330 U. S. 539, 544–545. There is no other federal statute which could be regarded as countermanding the mandate of Section 3466 and Code Section 1420 (b) in respect of the post-assignment interest, and it is clear that only Congress could bring about that result. Cf. *New York* v. *Saper,* 336 U. S. 328.

Indeed, in no case of which we are aware has this Court implied an intention to abandon priority under Section 3466 with respect to any claims arising under a revenue statute. Section 3466, which has been in force since 1797, is derived from earlier statutes enacted for the collection of taxes. *Price* v. *United States,* 269 U. S. 492, 500–501. Its function is to assure adequate public revenues to sustain the public burden, and

it is to be liberally construed in order to effectuate that purpose. *United States* v. *State Bank of North Carolina,* 6 Pet. 29, 35; *Bramwell* v. *U. S. Fidelity Co.,* 269 U. S. 483, 487; *Spokane County* v. *United States,* 279 U. S. 80, 92; *United States* v. *Emory,* 314 U. S. 423, 426. The interest allowance in the case of a tax rests "on the basic necessity of the Government to collect a carefully estimated sum of money by a particular date in order to meet its anticipated expenditures" (*Rodgers* v. *United States,* 332 U. S. 371, 374), and it is added to the tax by the statute to compensate the Government for being deprived of the use of the tax moneys from and after the due date. *Manning* v. *Seeley Tube & Box Co.,* 338 U. S. 561. In these circumstances, only the clearest of Congressional language, of which there is none here, could suggest that the federal priority was intended to be relinquished as to any part of the interest fixed by the revenue statutes. Certainly, a mere belief that the proceedings under an assignment and in bankruptcy ought to be consistent in this respect is far from enough to warrant the lower court's decision.

4. *The general rules governing allowance of post-assignment interest to other creditors do not apply*

The lower court also denied post-assignment interest to the United States apparently on the basis of what it regarded as the settled rule that

"creditors are not entitled to post-assignment interest where the proceeds are insufficient to pay all creditors in full." (R. 25.) However, it is manifest that the rule applicable to creditors generally does not govern the priority right of the United States for such interest.

It seems already sufficiently established from the preceding argument that Section 3466 is absolute in terms, that it gives priority to debts due the United States, and that the post-assignment interest which is made payable by Code Section 1420 (b), without any exception, is such a debt. These statutes enacted by Congress are supreme and cannot be displaced by the laws of any state. *United States* v. *Fisher*, 2 Cranch 358, 396; *United States* v. *Oklahoma*, 261 U. S. 253, 260; *Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290, 292. It must therefore follow that they cannot be superseded by the general rules, based on equitable considerations, which are applied by courts in disposing of the claims of other creditors for post-assignment interest. The controlling statutes are not silent on the matter of interest after the assignment but on the contrary command its payment as a priority debt in advance of the claims of other creditors, and there is thus no occasion for the application of court-fashioned rules. Cf. *Rodgers* v. *United States*, 332 U. S. 371, 373. If it is thought that the application of these statutes as they were enacted and intended by Congress results in in-

equities to other creditors, the remedy does not lie with the courts but must be sought from Congress. *United States* v. *Emory,* 314 U. S. 423, 431; *Illinois* v. *Campbell,* 329 U. S. 362, 376; *New Jersey* v. *Anderson,* 203 U. S. 483, 489–490.

Where a right is created by the statutes of the United States and does not originate in the laws of any State, the granting or withholding of interest as part of the remedy is also a function of federal law. *Vanston Committee* v. *Green,* 329 U. S. 156, concurring opinion, p. 168; accord, *Rodgers* v. *United States,* 332 U. S. 371, 373. See also *Royal Indemnity Co.* v. *United States,* 313 U. S. 289, 295–297; *Board of Comm'rs* v. *United States,* 308 U. S. 343, 350, 352. Not only were the taxes in this case imposed by Act of Congress, but the interest on the taxes accruing after the assignment and indeed the priority of the United States for these debts also arose under statutes of the United States. It follows *a fortiori* that the rights created by these statutes are not to be circumscribed by any rules of equitable distribution applied by the courts of New York,[11] or of

[11] Under Section 23 of the Debtor and Creditor Law (12 McKinney's Consolidated Laws of New York), as it was effective until September 1, 1950, when the right to create a preference was withdrawn, an insolvent debtor was permitted in his assignment for the benefit of creditors to create a preference in favor of particular creditors as to the amount of one-third in value of the assigned estate after deducting the wages and salaries given preference by Section 22 and the costs and expenses of executing the trust. Although this section was construed as not applying to New York corporations, which

any other state. The question of whether post-assignment interest is to be allowed to the United States as a priority creditor under Section 3466 is not a matter which should be left to be decided in each case by the equitable rules of the particular jurisdiction administering the insolvent estate, but is one which requires a rule of uniform application which will not depend on the vagaries of local law. Cf. *United States* v. *Pelzer,* 312 U. S. 399, 402–403; *Burnet* v. *Harmel,* 287 U. S. 103, 110. Here the federal statutes themselves fix the rule.

CONCLUSION

The judgment of the Court of Appeals of New York is erroneous and should be reversed.

Respectfully submitted.

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were forbidden to make preferences, the fact remains that other debtors could prefer such creditors as they wished. *Matter of Halsted,* 42 App. Div. 101; *In re Byuss Mfg. Co.,* 64 N. Y. S. 2d 601. In this situation, the use of equitable rules to deny the United States, which has a first priority, payment of its tax claims in full, including the interest accruing after the assignment, hardly seems consistent. See also *United States* v. *Bank of North Carolina,* 6 Pet. 29, 38, quoted, *supra,* p. 22.

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